

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

RIZZO ENVIRONMENTAL
SERVICES, INC.,

Plaintiff,

vs.

Case No. 2014-335-CB

DUMPSTER BROKERS, LLC,
d/b/a DUMPSTER FOR LESS,
and WILLIAM TURNER,

Defendants.

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OPINION AND ORDER

Plaintiff Rizzo Environmental Services, Inc. (“Plaintiff”) has filed a motion for partial summary disposition pursuant to MCR 2.116(C)(10). Defendants have filed a response and request that the motion be denied and that the Court grant it summary disposition pursuant to MCR 2.116(I)(2).

Factual and Procedural History

On November 19, 2012, Defendant Dumpster Broker, LLC d/b/a Dumpster For Less (“Defendant Dumpster”) entered into a written contract with Plaintiff pursuant to which, *inter alia*, Plaintiff agreed to be Defendant’s vendor for the purpose of providing, and later retrieving, dumpsters ordered by third parties (the “Contract”).

On November 3, 2014, Plaintiff filed its first amended complaint in this matter alleging that Defendant Dumpster breached the Contract (Count I), and that Defendant William Turner breached his personal guaranty under the Contract (Count II). Plaintiff’s complaint also includes claims for account stated against Defendant Dumpster (Count

III), unjust enrichment against Defendant Dumpster (Count IV), and fraud against all the Defendants (Count V).

On November 12, 2014, Plaintiff filed its instant motion for summary disposition of Counts I and II. Specifically, Plaintiff requests that the Court find that Defendant Dumpster breached the Contract by failing to exclusively use Plaintiff for their customers' solid waste collection needs, and that Defendant William Turner ("Defendant Turner") breached his personal guaranty by failing to make certain payments allegedly due under the Contract.

On December 10, 2014, Defendant filed their response to the instant motion. On December 15, 2014, the Court held a hearing in connection with the motion and took the matter under advisement.

Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

Arguments and Analysis

In its motion, Plaintiff contends that Defendant Dumpster agreed to exclusively use Plaintiff for certain services. Specifically, paragraph 6 of the Contract provides, in pertinent part:

6.Customer agrees to retain Contractor (within Contractor's service area) as Customer's exclusive solid waste collection, waste control, and waste recycling company for all Customer's locations within Contractor's geographical service area...

As a preliminary matter, the contract identifies Defendant Dumpster as "Customer" and Plaintiff as "Contractor." While Defendants concede that Defendant Dumpster did not utilize Plaintiff as its exclusive vendor for its customers, it contends that paragraph 6 does not apply to those services. Rather, Defendants contend that paragraph 6 only applies to situations where Defendant Dumpster personally requires the listed services in connection with its' physical locations.

A contractual provision is ambiguous when it is capable of conflicting interpretations." *Klapp v United Ins Group Agency, Inc.*, 468 Mich 459, 467; 663 NW2d 447 (2003). "A contract is clear and unambiguous if, however inartfully worded or clumsily arranged, it fairly admits of but one interpretation." *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 567; 596 NW2d 915 (1999).

After reviewing the Contract, the Court is convinced that paragraph 6 unambiguously only applies to situations in which Defendant Dumpster requires the listed services for its own locations. Paragraph 6 provides that Defendant Dumpster agrees to exclusively use Plaintiff for "all Customer's locations." "A contract must be interpreted according to its plain and ordinary meaning." *Alpha Capital Mgt Inc v Rentenbach*, 287 Mich App 589, 611; 792 NW2d 344 (2010). By utilizing the possessive

form of the term “Customer,” the parties clearly provided that the provision only applies to locations owned, or belonging to, Defendant Dumpster.

Had Plaintiff, as the drafting party, intended to have paragraph 6 apply to Defendant Dumpster’s customer’s locations it could have easily changed the verbiage it used. However, Plaintiff did not elect to use language that would expand the scope of paragraph 6. Based upon the plain meaning of the terms found in paragraph 6, the Court is convinced that the provision does not require Defendant Dumpster to exclusively use Plaintiff for its customer’s needs. Consequently, Defendant Dumpster, nor Defendant Turner under the guarantee, breached the terms of the Contract by failing to exclusively use Plaintiff for its customer’s solid waste collection, waste control, and waste recycling needs. Therefore, Plaintiff’s motion for summary disposition must be denied, and Defendants’ motion for summary disposition of Counts I and II of Plaintiff’s complaint pursuant to MCR 2.116(I)(2) must be granted to the extent that those counts are based on paragraph 6 of the Contract.

In addition, even if the Court were to find the language in paragraph 6 ambiguous, it would be construed against Plaintiff, as the drafting party. *Klapp v United Group Agency, Inc.*, 468 Mich 459; 663 NW2d 447 (2003). Accordingly, if the paragraph 6 were found ambiguous it would be interpreted against Plaintiff, which would result in the same conclusion reached above.

Conclusion

For the reasons discussed above, Plaintiff’s motion for partial summary disposition is DENIED. Further, Defendants’ request for summary disposition of the portion of Plaintiff’s counts I (Breach of Contract) and II (Breach of Guaranty) related to

paragraph 6 of the Contract is GRANTED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: January 22, 2015

JCF/sr

Cc: *via e-mail only*
Jay A. Schwartz, Attorney at Law, jschwartz@schwartzlawfirmpc.com
Ronald M. Haystead, ronhaystead@gmail.com